

9 VAC 25-800 VIRGINIA WATER PROTECTION GENERAL PERMIT FOR MINOR SURFACE WATER WITHDRAWALS

**Statutory Authority:** §§ 62.1-44.15 and 62.1-44.15:5 of the Code of Virginia and § 401 of the Clean Water Act (33 USC 1341).

**9 VAC 25-800-10. Definitions.**

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Impacts" means results caused by human-induced activities conducted in surface waters, as specified in § 62.1-44.15:5 D of the Code of Virginia.

“Interbasin transfer” means the withdrawal and transport of water from one eight digit United States Geological Service Hydrologic Unit to another eight digit United States Geological Service Hydrologic Unit where it is discharged.

“Minor agricultural surface water withdrawal” means a withdrawal of surface water in Virginia or from the Potomac River for the purpose of agricultural, silvicultural, horticultural, or aquacultural operations, as authorized by 9 VAC 25-800-30 B 2 or as applicable to 9 VAC 25-800-40. Agricultural surface water withdrawals include withdrawals for turf operations, but do not include withdrawals for landscaping activities, or turf installment and maintenance associated

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with landscaping activities.

“Minor public surface water supply withdrawal” means a withdrawal of surface water in Virginia or from the Potomac River for the production of drinking water, distributed to the general public for the purpose of, but not limited to, domestic use, as authorized by 9 VAC 25-800-30 B 1 or as applicable to 9VAC25-800-40.

“Minor surface water withdrawal” means a withdrawal of surface water in Virginia or from the Potomac River that is either authorized by 9 VAC 25-800-30 or is authorized under the limits of 9VAC25-800-40.

“Normal residential gardening, lawn and landscape maintenance” means ongoing noncommercial residential activities conducted by or on behalf of an individual occupant, including mowing, planting, fertilizing, mulching, tilling, vegetation removal by hand or by hand tools, placement of decorative stone, fencing and play equipment. Other appurtenant noncommercial activities, provided that they do not result in the conversion of a wetland to upland or to a different wetland type, may also be included.

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the

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year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

“Permanently fixed intake structures” means a structure designed to remain in a single location in order to withdraw surface water from a water body. It does not include portable or mobile equipment.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, or other legal entity.

“Surface water withdrawal” means the removal or diversion of surface water from its natural water course by humans for their beneficial use.

**9 VAC 25-800-20. Purpose; Delegation of Authority; Effective date of VWP general permit.**

A. The purpose of this regulation is to establish VWP General Permit Number WP5 under the VWP permit program regulation to govern the construction and operation of minor surface water withdrawals. Applications for coverage under this VWP general permit shall be

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processed for approval, approval with conditions, or denial by the board.

B. The director or his designee may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This VWP general permit regulation will become effective on *(insert month and day)*, 2006 and will expire on *(insert month and day that is ten years later)*, 2016.

D. Authorization to construct or operate surface water withdrawals under this VWP general permit is effective upon compliance with the provisions of 9 VAC 25-800-30.

Notwithstanding the expiration date of this general permit regulation, individual authorizations to construct or operate surface water withdrawals under this VWP general permit will continue for a maximum of ten (10) years.

**9 VAC 25-800-30. Authorization to Construct or Operate Minor Surface Water Withdrawals and Limits on Minor Surface Water Withdrawals.**

A. Any person governed by this VWP general permit is authorized to construct or operate a minor surface water withdrawal, provided that the applicant submits an application or a notification as required in 9 VAC 25-800-60, remits the required application processing fee

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pursuant to 9 VAC 25-20-10 et seq., complies with the limitations and other requirements of 9 VAC 25-800-90, receives approval from the board, and has not been required to obtain a VWP individual permit under the VWP permit program regulation (9 VAC 25-210-10 et seq.) for the proposed project. The applicant, at his discretion, may seek a VWP individual permit in lieu of coverage under this VWP general permit. In order for public water supply applicants to be considered for coverage under this VWP general permit regulation, the surface water withdrawal must meet the requirements of this VWP general permit regulation, and the applicant must either currently hold a VWP individual permit for the surface water withdrawal or the surface water withdrawal must be identified in an approved water supply plan, pursuant to § 62.1-44.38:1 of the Code of Virginia and 9 VAC 25-780 et seq. of the Virginia Administrative Code.

B. The right to withdraw water from any watercourse is limited to the amount that can be put to beneficial use by the public to be served. Surface water withdrawals authorized by this VWP general permit shall not exceed the daily totals as calculated below, or 3.0 million gallons per day (1,095 million gallons per year), whichever is less:

1. Public surface water supply withdrawals as calculated by  $WD_{max} = C \times MAF$ , where:

a. “ $WD_{max}$ ” equals the maximum daily water withdrawal rate.

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b. “C” equals a coefficient that varies according to whether the intake is located in a basin with low-, average-, or high-base flow characteristics, as presented in Table 1 below.

c. “MAF” equals the mean annual flow of the stream at the intake.

**Table 1. C values for public surface water supply withdrawals.**

<u>Basin Type</u>	<u>C Value</u>
<u>Low Base Flow</u>	<u>0.01</u>
<u>Average Base Flow</u>	<u>0.02</u>
<u>High Base Flow</u>	<u>0.03</u>

2. Agricultural surface water supply withdrawals as calculated by  $WD_{max} = C \times MAF$ ,

where:

a. “ $WD_{max}$ ” equals the maximum daily water withdrawal rate in a calendar year.

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b. “C” equals a coefficient that varies according to whether the intake is located in a basin with low-, average-, or high-base flow characteristics and according to the calendar month, as presented in Table 2 below.

c. “MAF” equals the mean annual flow of the stream at the intake.

**Table 2. C values for agricultural surface water supply withdrawals.**

<u>Month</u>	<u>C Value</u> <u>Low Base Flow</u>	<u>C Value</u> <u>Average Base Flow</u>	<u>C Value</u> <u>High Base Flow</u>
<u>January</u>	<u>0.02</u>	<u>0.03</u>	<u>0.03</u>
<u>February</u>	<u>0.02</u>	<u>0.03</u>	<u>0.03</u>
<u>March</u>	<u>0.02</u>	<u>0.03</u>	<u>0.03</u>
<u>April</u>	<u>0.02</u>	<u>0.02</u>	<u>0.03</u>
<u>May</u>	<u>0.02</u>	<u>0.02</u>	<u>0.03</u>
<u>June</u>	<u>0.02</u>	<u>0.02</u>	<u>0.03</u>
<u>July</u>	<u>0.02</u>	<u>0.02</u>	<u>0.03</u>

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<u>August</u>	<u>0.02</u>	<u>0.02</u>	<u>0.03</u>
<u>September</u>	<u>0.01</u>	<u>0.01</u>	<u>0.02</u>
<u>October</u>	<u>0.01</u>	<u>0.01</u>	<u>0.02</u>
<u>November</u>	<u>0.01</u>	<u>0.02</u>	<u>0.03</u>
<u>December</u>	<u>0.01</u>	<u>0.02</u>	<u>0.03</u>

3. All other surface water withdrawals as calculated by  $WD_{max} = C \times MAF$ , where:

- a. “ $WD_{max}$ ” equals the maximum daily water withdrawal rate.
- b. “C” equals a coefficient that varies according to the calendar month and according to the flow in the stream, as presented in Table 3 below.
- c. “MAF” equals the mean annual flow of the stream at the intake.
- d. When the flow in the stream is less than or equal to the instream flow-by requirement (IFR), surface water withdrawal is prohibited. The monthly 80% exceedance flow (Monthly  $Q_{80}$ ) is the flow that, on average for each month, is exceeded 80% of the time.

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**Table 3. C and IFR values for all other surface water withdrawals.**

<u>Value</u>	<u>January – May</u>	<u>June – October</u>	<u>November - December</u>
<u>C</u>	<u>0.04</u>	<u>0.03</u>	<u>0.03</u>
<u>IFR</u>	<u>40% of MAF</u>	<u>Monthly Q<sub>80</sub></u>	<u>30 % of MAF</u>

D. Surface water withdrawals in the basins listed herein shall be deemed to have low base flow. Calculations made to determine surface water withdrawal limits in these basins shall use the C values for low base flow specified in Tables 1 and 2:

1. Potomac River Basin: The North Fork Shenandoah River and its tributaries from its confluence with Linville Creek to its headwaters; Happy Creek from its confluence with the South Fork Shenandoah River to its headwaters; South Fork of Quantico Creek and its tributaries from its confluence with Quantico Creek to its headwaters; Catoctin Creek and its tributaries from its confluence with the Potomac River to its headwaters; Goose Creek and its tributaries from its confluence with the Potomac River to its headwaters; Occoquan River and its tributaries from Occoquan Dam to its headwaters; and Aquia

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Creek and its tributaries from its confluence with the Potomac River to its headwaters.

2. Rappahannock River Basin: The Rush River and its tributaries from its confluence with the Thornton River to its headwaters, and Battle Run and its tributaries from its confluence with the Thornton River to its headwaters.

3. York River Basin: Contrary Creek and its tributaries from Lake Anna to its headwaters; the Mattaponi River and its tributaries from the Route 301 Bridge to its headwaters; the Little River and its tributaries from its confluence with the North Anna River to its headwaters; Totopotomy Creek and its tributaries from its confluence with the Pamunkey River to its headwaters; Beaverdam Swamp in Gloucester and its tributaries from its confluence with the Ware River to its headwaters; and Dragon Run Swamp and its tributaries from the Route 17 bridge to its headwaters.

4. James River Basin: The South Fork Rivanna River and its tributaries from its confluence with Moores Creek to its headwaters; the Chickahominy River and its tributaries from Walkers dam to its headwaters; Deep Creek in Amelia and its tributaries from its confluence with the Appomattox River to its headwaters; and Falling Creek in Chesterfield County and its tributaries from its confluence with the James River to its headwaters.

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5. Chowan River Basin: The Blackwater River in Virginia and all its tributaries; the Nottoway River and its tributaries from a point at State Route 723 on the Lunenburg and Nottoway County border upstream to its headwaters; and Stony Creek in Dinwiddie County and its tributaries from U.S. Route 1 to its headwaters.

6. New River Basin: Glade Creek and its tributaries from its confluence with the New River to its headwaters.

7. Roanoke River Basin: The Hyco River and its tributaries in Virginia from its confluence with Kerr Lake to its headwaters; Roanoke Creek and its tributaries from its confluence with the Roanoke River to its headwaters; and Allen Creek and its tributaries from its confluence with Lake Gaston to its headwaters.

8. Big Sandy River Basin: Russell Fork and its tributaries from its confluence with the Pound River upstream to its headwaters, and Levisa Fork and its tributaries from the Kentucky State line upstream to its headwaters.

E. Surface water withdrawals in the basins listed herein shall be deemed to have high base flow. Calculations made to determine surface water withdrawal limits in these basins shall

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use the C values for high base flow specified in Tables 1 and 2:

1. James River Basin: The Bullpasture River and its tributaries from its confluence with the Calfpasture River to its headwaters.

2. Shenandoah River Basin: Abrams Creek and its tributaries from the confluence with Opequon Creek to its headwaters; Christians Creek and its tributaries from its confluence with Middle River to its headwaters; the South River and all its tributaries from its confluence with the South Fork Shenandoah to its headwaters; and the South Fork Shenandoah River proper from its confluence with the South River to the Route 211 bridge in Page County.

3. Roanoke River Basin: All tributaries of the Mayo River in Virginia from the North Carolina line to its headwaters, and the Pigg River and its tributaries from its confluence with Leesville Lake to its headwaters.

4. The New River Basin: The New River in Virginia and all its tributaries with the exception of the tributary basins of Glade Creek, Peak Creek, Wolf Creek, Walker Creek and the Bluestone River.

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5. Tennessee River Basin: The Middle Fork Holston River and its tributaries from South Fork Holston Reservoir to its headwaters; the South Fork Holston River and its tributaries from South Fork Holston Reservoir to its headwaters; Beaver Creek in Virginia and its tributaries; and Copper Creek and its tributaries from its confluence with the Clinch River to its headwaters.

F. All other streams not stated in subdivisions D and E of this subsection shall be considered to have average base flow.

G. When surface water is withdrawn from multiple intakes for the same facility, the maximum withdrawal for all intakes shall not exceed 3.0 million gallons per day (1,095 million gallons per year). The total withdrawal permitted shall be divided between the intakes in proportion to the average flow at each intake location. The mean annual flow of upstream intakes shall be subtracted from the mean annual flow of downstream intakes in computing the total mean annual flow at the downstream intakes.

H. Authorization for coverage under this VWP general permit may be used in combination with authorization for coverage under VWP general permits WP1 (9 VAC 25-660 et seq.), WP2 (9 VAC 25-670 et seq.), WP3 (9 VAC 25-680 et seq.), or WP4 (9 VAC 25-690 et seq.), provided that the thresholds of this VWP general permit and the thresholds of the other VWP

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general permits are not exceeded.

I. Receipt of this VWP general permit authorization does not relieve a permittee of the responsibility to comply with other applicable federal, state or local statutes, ordinances, or regulations.

J. In evaluating the application, the board shall make an assessment of the project in combination with other existing or proposed projects with impacts. The board shall deny an applicant authorization to use this VWP general permit for impacts, either separate or cumulative, that cause or contribute to, or may reasonably be expected to cause or contribute to, a significant impairment of the state waters or fish and wildlife resources, or that may cause or contribute to a violation of water quality standards.

**9 VAC 25-800-40. Activities Not Requiring Authorization.**

The following activities are regulated under the Virginia Water Protection Permit Program but do not require the submittal of a Joint Permit Application, or DEQ authorization under this VWP general permit regulation, unless the activity is otherwise prohibited by 9VAC25-800-50. These activities may require other permits under local, state, or federal law:

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1. Dry hydrants or emergency surface water withdrawals for firefighting or for the training activities related to firefighting.
  
2. Surface water withdrawals placed into portable containers by persons owning property on, or holding easements to, riparian lands.
  
3. Surface water withdrawn for the purposes of hydrostatic pressure testing of water tight containers, pipelines, and vessels.
  
4. Surface water withdrawals from non-tidal surface waters for agricultural, aquacultural, horticultural, or floricultural purposes that total less than one million gallons in a single month.
  
5. Surface water withdrawals from non-tidal surface waters for all other purposes that total less than 10,000 gallons per day.
  
6. Surface water withdrawals from tidal surface waters for agricultural, aquacultural, horticultural, or floricultural purposes that total less than 60 million gallons in a single month.

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7. Surface water withdrawals from tidal surface waters for all other purposes that total less than two million gallons per day.

8. Surface water withdrawals for normal single family home residential gardening, lawn and landscape maintenance.

9. Surface water withdrawals from ponds collecting diffuse surface water and not situated on a perennial stream.

10. Surface water withdrawals that are located on a property, such that the withdrawal returns to the stream of origin; not more than half of the flow is diverted; not more than 1,000 feet of stream channel separate the withdrawal point from the return point; and both banks of the affected stream segment are located within that property boundary.

11. Surface water withdrawals from quarry pits, such that the withdrawal does not alter the physical, biological, or chemical properties of surface waters connected to the quarry pit.

**9 VAC 25-800-50. Activities Prohibited from Coverage.**

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A. This VWP general permit may not be used for the following activities:

1. Withdrawal of surface water that originates directly from springs or that exists on the ground surface between the spring and the beginning point of a stream channel.

2. Impacts to streams or open waters, other than the physical removal of surface water, or impacts to wetlands. Separate authorizations from federal, state and local agencies may be required to cover those impacts.

3. Withdrawals utilized as cooling water at power plants.

4. Withdrawals from stockable trout waters (DEQ Class V, subclasses v and vi) and natural trout waters (DEQ Class VI).

5. Withdrawals from surface waters where the proposed activity will impact federal or state listed or proposed threatened or endangered species, or proposed or designated critical habitat, pursuant to § 62.1-44.15:5 of the Code of Virginia.

6. Withdrawals from surface waters where the proposed activity will impact surface waters designated as Exceptional Surface Waters, pursuant to 9 VAC 25-260-30 A 3 of

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the Virginia Administrative Code and § 62.1-44.15 of the Code of Virginia.

7. Interbasin transfers.

B. The activity to impact surface waters shall not have been prohibited by state law or regulations, nor shall it contravene applicable Water Quality Standards (9 VAC 25-260-5 et seq.).

C. Authorization for coverage under this VWP general permit may not be combined with another authorization for coverage under this same VWP general permit in order to increase the authorized limits contained herein.

**9 VAC 25-800-60. Application and Notification.**

A. Applications shall be filed with the board as follows:

1. The applicant shall file a complete application, using the appropriate version of the Joint Permit Application (JPA), as noted in the Forms section of this VWP general permit regulation. The appropriate JPA shall serve as an application under this regulation for a VWP general permit number WP5 for the construction and operation of minor surface

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water withdrawals and shall serve as a notice of intent for coverage under this VWP general permit.

2. The Virginia Department of Transportation (VDOT) may use its monthly Interagency Coordination Meeting (IACM) process for submitting applications.

B. The application shall be signed in accordance with 9 VAC 25-210-100. If an agent is acting on behalf of an applicant, the applicant shall submit an authorization of the agent that includes the signatures of both the applicant and the agent.

C. Incomplete application. Where an application is incomplete, the board shall require the submission of additional information and shall suspend processing the application until such time as the applicant has supplied the missing or deficient information and the application is complete. Further, where the applicant becomes aware that he omitted one or more relevant facts from an application, or submitted incorrect information in an application or in a report to the board, the applicant shall immediately submit such facts or the correct information. Such application with new information shall be deemed a new application, but shall not require an additional permit application fee.

D. Coordination. The board will determine whether the proposed activity requires

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coordination with the United States Fish and Wildlife Service, the Virginia Department of Conservation and Recreation, the Virginia Department of Agriculture and Consumer Services, and the Virginia Department of Game and Inland Fisheries regarding the presence of federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat. Based upon consultation with these agencies, the board may deny coverage under this VWP general permit.

E. Reauthorization. Reapplication for the continuation of authorized surface water withdrawals under this VWP general permit regulation must be made no less than 60 days prior to the expiration date of the permittee's valid VWP general permit authorization, at which time the board will determine the appropriate VWP permit action. Reapplication shall be made in accordance with 9 VAC 25-800-60 A and B, and a permit application fee will be charged. Reapplication shall be subject to the procedures established in 9 VAC 25-800-60 C and D.

**9 VAC 25-800-70. Modification of Authorization (Notice of Planned Changes).**

A. Authorization under this VWP general permit regulation may be modified after issuance for a change in project plans that does not result in a change to the authorized surface water withdrawal activities or authorized withdrawal volumes.

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B. Authorization under this VWP general permit regulation may be modified after issuance for typographical errors.

C. Application for a planned change shall consist of a written request to the board, submitted by the permittee no less than 30 days in advance of the planned change. The request shall include the valid permit authorization number; the permitted facility name and location; the name, address, and signature of the permittee or authorized agent; a detailed description of and purpose for the requested change to authorization; and dated, plan-view and cross-sectional view sketches of all proposed changes to a structure, if applicable. No permit application fee shall be charged.

D. The request for a planned change shall be reviewed by the board according to all provisions of this regulation.

**9 VAC 25-800-80. Termination of Authorization by Consent.**

If the authorized activities requiring application or notification under 9 VAC 25-800-60 are completed prior to the authorization expiration date or will not occur, the permittee may submit a request for termination by consent within 30 days of project completion, project cancellation, or

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the voluntary termination of authorized surface water withdrawals. The director may accept this termination of authorization on behalf of the board. The permittee shall submit the following information:

1. Name, mailing address, and telephone number;

2. Name and location of the authorized activities;

3. The VWP permit authorization number; and

4. One of the following certifications:

a. For project completion:

“I certify under penalty of law that the activities authorized by a VWP general permit have been completed. I understand that by submitting this notice of termination, that I am no longer authorized to perform the activities covered by this VWP general permit, and that performing such activities is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for violations of this VWP general permit authorization.”

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b. For project cancellation:

“I certify under penalty of law that the activities authorized by this VWP general permit will not occur. I understand that by submitting this notice of termination, that I am no longer authorized to perform activities covered by this VWP general permit, and that performing such activities is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from liability for violations of this VWP general permit authorization, nor does it allow me to resume the permitted activities without reapplication and reauthorization.”

c. For voluntary termination of authorized, surface water withdrawals:

“I certify under penalty of law that the surface water withdrawal authorized by a VWP general permit have been voluntarily terminated. I understand that by submitting this notice of termination, that I am no longer authorized to withdraw surface water as covered under this VWP general permit, and that continuing to withdraw surface water is unlawful where the activity is not authorized by a VWP permit. I also understand that the submittal of this notice does not release me from

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liability for violations of this VWP general permit authorization.”

**9 VAC 25-800-90. VWP general permit.**

An applicant whose application has been accepted by the board shall be subject to the following requirements:

VWP General Permit Number WP5

Authorization effective date:

Authorization expiration date:

VWP GENERAL PERMIT FOR MINOR SURFACE WATER WITHDRAWALS UNDER THE VIRGINIA WATER PROTECTION PERMIT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

Based upon an examination of the information submitted by the applicant, and in compliance with § 401 of the Clean Water Act, as amended (33 USC 1341), the State Water Control Law,

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and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this VWP general permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the activity, together with other existing or proposed activities, will not cause or contribute to a significant impairment of state waters or fish and wildlife resources.

Subject to the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, the permittee is authorized to construct or operate a minor surface water withdrawal.

Permittee:

Address:

Activity Location:

Activity Description:

Authorization Note(s):

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1. The permittee shall comply with the following maximum daily surface water withdrawal limits in addition to all other requirements of this VWP general permit authorization:

The authorized activity shall be in accordance with this cover page, Part I - Special Conditions, Part II - Monitoring and Reporting Conditions, and Part III - Conditions Applicable to All VWP General Permits, as set forth herein.

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Director, Department of Environmental Quality

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Date

Part I. Special Conditions.

A. Authorized activities.

1. This permit authorizes the construction and operation of a minor surface water withdrawal where the maximum allowable withdrawal shall be equal to the daily totals authorized by 9 VAC 25-800-30, or 3.0 million gallons per day (1,095 million gallons per year), whichever is less. The authorized activity shall be subject to the limitations and

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prohibitions in 9 VAC 25-800-30 and 9 VAC 25-800-50.

2. Any changes to the authorized activities associated with this project shall require either a Notice of Planned Change in accordance with 9 VAC 25-800-70, or another VWP permit application. A termination by consent may be requested when the change involves project completion before the authorization expiration date, or project cancellation, as per 9 VAC 25-800-80.

3. Reapplication for the continuation of authorized surface water withdrawals under this VWP general permit regulation must be made no less than 60 days prior to the expiration date of the permittee's valid VWP general permit authorization, at which time the board will determine the appropriate VWP permit action. Reapplication shall be made in accordance with 9 VAC 25-800-60 A and B, and a permit application fee will be charged.

B. Unauthorized impacts. Impacts to streams or open waters, other than the physical removal of surface water, or impacts to wetlands are not authorized by this VWP general permit.

Separate authorizations from federal, state and local agencies may be required to cover those impacts.

C. General conditions.

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1. The activities authorized by this VWP general permit shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in §62.1-10 (b) of the Code of Virginia.

2. No activity may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound surface water. No activity may cause more than minimal adverse effect on navigation. Furthermore the activity must not impede the passage of normal or expected high flows, and the structure or discharge must withstand expected high flows.

3. The permittee shall conduct activities in accordance with all time-of-year restrictions that may be recommended by the Department of Game and Inland Fisheries or the Virginia Marine Resources Commission, and shall ensure that all contractors are aware of the time-of-year restrictions imposed.

4. Permanently fixed intake structures shall be designed to include a screen over the pipe opening that has a maximum mesh size of one (1) millimeter and to allow a through-screen velocity of 0.5 feet per second.

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5. For each authorized surface water withdrawal, except minor agricultural surface water withdrawals, as defined in 9 VAC 25-800-10, a drought response and contingency plan shall be developed by the permittee that contains, at a minimum, the mandatory water conservation activities that are identified by the permittee as reducing current water use by 10-15%. The plan shall be implemented upon declaration by the Governor of the Commonwealth of Virginia or the appointed drought response coordinator that emergency drought conditions exist in the region where the permittee is authorized to conduct water withdrawal activities. The permittee shall maintain a copy of the plan for the effective term of this permit authorization and shall provide DEQ with a copy upon request.

D. Conditions applicable to construction activities.

1. Wet or uncured concrete shall be prohibited from entry into flowing surface waters. Excess or waste concrete shall not be disposed of in flowing surface waters or washed into flowing surface waters.

2. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be

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placed prior to clearing and grading and maintained in good working order to minimize impacts to state waters. These controls shall remain in place until the area is stabilized and shall then be removed.

3. Exposed slopes and streambanks shall be stabilized immediately upon completion of work in each permitted impact area. Denuded areas shall be properly stabilized in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

4. Construction, construction access (for example, cofferdams, sheetpiling, and causeways), and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this VWP general permit.

5. No machinery may enter flowing surface waters, unless authorized by this VWP general permit.

6. The permittee shall employ measures to prevent spills of fuels or lubricants from entering state waters.

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7. Water quality standards shall not be violated as a result of the construction, construction access (for example, cofferdams, sheetpiling, and causeways), and demolition activities, unless authorized by this VWP general permit.

E. Stream Modification and Stream Bank Protection.

1. Riprap or other bank stabilization structures or materials shall not be placed below the ordinary high water mark in stream channels, into wetlands, or into open water without separate authorization, if required, from federal, state, and local agencies.

2. Riprap bank stabilization placed above the ordinary high water mark in stream channels shall be of an appropriate size and design in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

3. Riprap aprons for outfall structures placed above the ordinary high water mark in stream channels shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.

4. For stream bank protection activities, the structure and backfill, when placed above the ordinary high water mark in stream channels, shall be placed as close to the stream bank

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as practicable. No material shall be placed in excess of the minimum necessary for erosion protection.

5. Redistribution of existing stream substrate for the purpose of erosion control is prohibited.

Part II. Monitoring and Reporting Conditions.

A. General Reporting. All permittees shall comply with the following general reporting procedures:

1. Written communications required by this VWP general permit shall be submitted to the appropriate DEQ office. The VWP general permit authorization number shall be included on all correspondence. All communications and documentation required by this VWP general permit shall contain the following signed certification statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly

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responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.”

2. The permittee shall notify DEQ in writing when unusual or potentially complex conditions are encountered that involve a potentially toxic substance. Measures to remove the toxic substance or to change the location of structures are prohibited until approved by DEQ.

3. The permittee shall report fish kills or spills of oil or fuel immediately upon discovery. If spills or fish kills occur between the hours of 8:15 a.m. to 5 p.m., Monday through Friday, the appropriate DEQ regional office shall be notified. If DEQ cannot be contacted, the permittee shall notify the Department of Emergency Management at 1-800-468-8892.

4. The permittee shall report (a) unauthorized discharges of sewage, industrial waste, other wastes, or any noxious or deleterious substance into or upon state waters that is associated with the authorized activities under this VWP general permit, or (b) unauthorized discharges that may reasonably be expected to enter state waters and are

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associated with the authorized activities under this VWP general permit. The permittee shall report the incident to the appropriate DEQ regional office within 24 hours. If DEQ cannot be contacted, the permittee shall notify the Department of Emergency Management at 1-800-468-8892, or the coordinator of emergency services appointed pursuant to § 44-146.19 of the Code of Virginia for the political subdivision reasonably expected to be affected by the discharge. A written notice shall immediately follow the initial report. The written notice shall be addressed to the Director of the Department of Environmental Quality and submitted to the appropriate DEQ regional office.

5. The permittee shall retain all records of water withdrawal and gage calibration for the effective term of this VWP general permit authorization.

6. The permittee shall make all monitoring and reporting records available to the board upon request. The board encourages users to confer with the board staff before installing gaging devices or implementing other methodologies to measure withdrawal volumes.

B. Monitoring and Reporting for Surface Water Withdrawals. The following monitoring and reporting requirements are specific to the type of withdrawal:

1. For public surface water withdrawals authorized by 9 VAC 25-800-30 B 1 and for

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agricultural surface water supply withdrawals authorized by 9 VAC 25-800-30 B 2, the permittee shall monitor and report water use in compliance with the Water Withdrawal Reporting Regulation 9 VAC 25-200 et seq.

2. For other surface water withdrawals authorized by 9 VAC 25-800-30 B 3 and withdrawals having instream flow-by requirements, the permittee shall monitor and report water withdrawals as follows:

a. For each day that water is withdrawn, the permittee shall monitor and record the following information: the date, the amount of water withdrawn, the stream flow at the USGS monitoring gage (see Authorization Notes section of this VWP general permit authorization), and the time of day that the gage is monitored.

b. The permittee shall submit the information required in subdivision a. of this subsection for each calendar year (January through December) that water withdrawal occurs. The information shall be recorded on a reporting form designated by the board and submitted to DEQ by January 31<sup>st</sup> of following calendar year.

Part III. Conditions Applicable to All VWP General Permits.

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A. Duty to comply. The permittee shall comply with all conditions of the VWP general permit. Nothing in this VWP general permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and toxic standards and prohibitions. Noncompliance with this VWP general permit is a violation of the Clean Water Act, as amended, and State Water Control Law, and is grounds for enforcement action, VWP general permit authorization termination for cause, VWP general permit authorization revocation, or denial of a reauthorization request.

B. Duty to mitigate. The permittee shall take reasonable steps to minimize or prevent impacts in violation of this VWP general permit which may have a reasonable likelihood of adversely affecting human health or the environment.

C. Reopener. This VWP general permit authorization may be reopened to modify its conditions when the circumstances on which the previous VWP general permit authorization was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time that the VWP general permit authorization was issued, and thereby constitutes cause for revocation of the VWP general permit authorization.

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D. Compliance with state and federal law. Compliance with this VWP general permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP general permit shall be construed to preclude the institution of legal action under or relieve the permittee from responsibilities, liabilities, or other penalties established pursuant to other state laws or regulations or under the authority preserved by § 510 of the Clean Water Act.

E. Property rights. The issuance of this VWP general permit does not convey property rights in either real or personal property, or exclusive privileges, nor does it authorize injury to private property or invasion of personal property rights, nor infringement of federal, state or local laws or regulations.

G. Right of entry. The permittee shall allow the board or its agents, upon the presentation of credentials, at reasonable times and under reasonable circumstances:

1. To enter the permittee's property, public or private, and have access to, inspect and copy records that must be kept as part of the VWP general permit conditions;
2. To inspect facilities, operations, or practices (including monitoring and control equipment) regulated or required under the VWP general permit; or

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3. To sample or monitor substances, parameters, or activities for the purpose of assuring compliance with the conditions of the VWP general permit or as otherwise authorized by law.

For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained herein shall make an inspection time unreasonable during an emergency.

H. Transferability of VWP general permit authorization. This VWP general permit authorization may be transferred to another person by a permittee if:

1. The current permittee notifies the board of the transfer of the title to the facility or property;

2. The notice to the board includes a written agreement between the existing and new permittee containing a specific date of transfer of VWP general permit authorization responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage or liability, including liability for compliance with the requirements of enforcement activities related to the permitted activity; and

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3. The board does not notify the existing and new permittee of its intent to modify or revoke and reissue the VWP general permit authorization within 15 days.

On the date of the VWP general permit authorization transfer, the transferred VWP general permit authorization shall be as fully effective as if it had been issued directly to the new permittee.

I. Reauthorization. Reapplication for the continuation of authorized surface water withdrawals shall be made in accordance with 9 VAC 25-800-60.

J. Modifications (Notice of Planned Change). If a planned change occurs, the permittee shall notify the board in accordance with 9 VAC 25-800-70.

K. VWP general permit authorization termination for cause. This VWP general permit authorization is subject to termination for cause by the board after public notice and opportunity for a hearing. Reasons for termination for cause are as follows:

1. Noncompliance by the permittee with any condition of the VWP general permit authorization;

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2. The permittee's failure in the application or during the VWP general permit authorization issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;

3. The permittee's violation of a special or judicial order; or

4. A determination that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by a VWP general permit authorization planned change or termination for cause.

L. VWP general permit authorization termination by consent. This VWP general permit authorization may be terminated by consent in accordance with 9 VAC 25-800-80.

M. Civil and criminal liability. Nothing in this VWP general permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

N. Oil and hazardous substance liability. Nothing in this VWP general permit shall be construed to preclude the institution of legal action or relieve the permittee from responsibilities, liabilities, or penalties to which the permittee is or may be subject under §

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311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

O. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

P. Duty to provide information.

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying or terminating the VWP permit authorization, or to determine compliance with the VWP permit authorization. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.

2. Plans, maps, conceptual reports, and other relevant information shall be submitted as required by the board prior to commencing construction.

Q. Monitoring and records requirements.

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1. Monitoring and reporting shall be in accordance with 9 VAC 25-800-90 Part II A and

B.

2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

3. The permittee shall retain records of monitoring information, including the calibration and maintenance records and the original strip chart or electronic recordings for continuous monitoring instrumentation, copies of reports required by the VWP permit, and records of data used to complete the application for the VWP permit, for a period of at least three years from the date of the VWP general permit authorization expiration. This period may be extended by request of the board at any time.

R. Unauthorized discharge of pollutants. Except in compliance with this VWP general permit, it shall be unlawful for the permittee to:

1. Discharge sewage, industrial wastes, other wastes, or noxious or deleterious substances into state waters;

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2. Otherwise alter the physical, chemical, or biological properties of state waters, such that the waters are made detrimental to the public health, to animal or aquatic life, or to the uses of such waters.

**FORMS**

Department of Environmental Quality Water Division Permit Application Fee Form (eff. July 1, 2004).

Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. October 2, 2004).

Virginia Department of Transportation Joint Permit Application for Activities in Waters and Wetlands of the Commonwealth of Virginia (eff. October 28, 2002).

**DOCUMENTS INCORPORATED BY REFERENCE**

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of

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SURFACE WATER WITHDRAWALS

Conservation and Recreation.